

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION

BEFORE THE HONORABLE CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE
CHANGE OF PLEA HEARING
APRIL 1, 2009

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1 ST. LOUIS, MISSOURI; APRIL 1, 2009

2 11:17 a.m.

3 THE COURT: Good morning.

4 MR. ROSENBLUM: Good morning, Your Honor.

5 MR. HOLTSouser: Good morning, Judge. You should
6 have on your desk in front of you there the original signed
7 copies of the Plea Agreement Guideline Recommendations and
8 Stipulations and then a Memorandum of Agreement that is
9 incorporated in that document.

10 THE COURT: All right. Thank you. And neither of
11 these is to be filed under seal; is that correct?

12 MR. HOLTSouser: That is correct.

13 THE COURT: Okay. This is United States v. David
14 Carruthers, and it's before the Court for a change of plea to
15 Count 1 of the Third Superseding Indictment.

16 Mr. Carruthers, have you received a copy of the
17 Third Superseding Indictment?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: In Count 1, you are charged with
20 violating Title XVIII United States Code Section 1962(d), in
21 that you were allegedly employed or associated with an
22 enterprise affecting interstate or foreign commerce known as
23 the BetonSports organization; and that you conspired with
24 others to participate in or to conduct the affairs of the
25 enterprise through a pattern of racketeering activity that

1 consisted of multiple acts involving gambling offenses in
2 violation of the statutes in Missouri and of other states and
3 acts that were indictable under federal statutes governing
4 the use of wire communication to transmit wagering information;
5 mail fraud; wire fraud; interstate travel in aid of
6 racketeering; interstate transportation of gambling
7 paraphernalia; operation of an illegal gambling business; and
8 money laundering.

9 Do you understand the charge in Count 1?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: What is your plea to that charge?

12 THE DEFENDANT: I plead guilty.

17 THE DEFENDANT: Okay.

18 THE COURT: If you want to talk to your lawyers
19 before you give an answer, let me know; and I'll give you
20 time to speak with them. All right?

21 THE DEFENDANT: Thank you.

22 THE COURT: You're welcome. Before we continue, the
23 clerk is going to give an oath to you. So please raise your
24 right hand.

25 (Whereupon, the defendant was sworn.)

1 THE COURT: You have to give true answers to my
2 questions. If you don't answer truthfully, you could be
3 prosecuted for perjury or for making a false statement; do
4 you understand?

5 THE DEFENDANT: I understand.

6 THE COURT: Mr. Carruthers, how old are you?

7 THE DEFENDANT: I'm 51.

8 THE COURT: And how far did you go in school?

9 THE DEFENDANT: I qualified in the Master's Degree
10 in the Business Administration in 1995, but I didn't go
11 beyond high school. I did the Master's Degree part time as a
12 mature student.

13 THE COURT: I see. All right. Do you have any
14 health problems?

15 THE DEFENDANT: Not that I am aware of.

16 THE COURT: In the last 24 hours, have you taken any
17 prescription medicine or over-the-counter medicine?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: Have you drunk any alcoholic beverages
20 or used any illegal drugs in the last 24 hours?

21 THE DEFENDANT: I had a glass of wine last night.

22 THE COURT: Anything else?

23 THE DEFENDANT: No.

24 THE COURT: How are you feeling this morning?

25 THE DEFENDANT: I'm fine.

1 THE COURT: Have you ever been treated for a mental
2 illness?

3 THE DEFENDANT: No.

4 THE COURT: Have you ever consulted a mental health
5 professional for any reason?

6 THE DEFENDANT: No.

7 THE COURT: Do you understand why you're here today?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand the purpose of
10 this hearing?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Rosenblum, do you have any reason to
13 doubt your client's mental competence?

14 MR. ROSENBLUM: None whatsoever, Your Honor.

15 THE COURT: Mr. Carruthers, have you had enough time
16 to talk to your lawyers about this case?

17 THE DEFENDANT: Yes.

18 THE COURT: And have you talked to them about
19 whether or not you should plead guilty?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you satisfied with the legal
22 representation that you've received?

23 THE DEFENDANT: It's been excellent, Your Honor.

24 THE COURT: Do you understand that by pleading
25 guilty you are giving up your right to a speedy and public

1 jury trial?

2 THE DEFENDANT: Yes.

3 THE COURT: If there were a trial, you would be
4 entitled to the presumption of innocence. You would not have
5 the burden of proving to the jury that you are innocent; do
6 you understand?

7 THE DEFENDANT: I understand.

8 THE COURT: The government would have the burden of
9 proving your guilt beyond a reasonable doubt if there were a
10 trial; do you understand?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: You would have the right to be present
13 in the courtroom throughout the trial; do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: You would also have the right to
16 cross-examine all of the government's witnesses; do you
17 understand?

18 THE DEFENDANT: Yes.

19 THE COURT: You would have the right to call
20 witnesses to testify in your defense at a trial?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand?

23 THE DEFENDANT: (Nods head.)

24 THE COURT: If you needed the Court to issue
25 subpoenas or to otherwise compel your witnesses to come here,

1 the Court would provide that service to you free of charge;
2 do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: If there were a trial, you would have
5 the right to testify and the right not to testify; do you
6 understand.

7 THE DEFENDANT: Yes.

8 THE COURT: If you chose not to testify at the
9 trial, the jury could not hold that against you. And the
10 jury could not take that into considerations in deciding
11 whether you are guilty or not guilty; do you understand?

12 THE DEFENDANT: I understand.

13 THE COURT: The next time you come to court will be
14 for sentencing. You will not have a trial; do you
15 understand?

16 THE DEFENDANT: I understand.

17 THE COURT: You will have to answer questions that
18 I'm going to ask you about this offense, and you will have to
19 admit that you committed the crime charged in Count 1; do you
20 understand?

21 THE DEFENDANT: I understand.

22 THE COURT: Mr. Carruthers, do you understand all of
23 the rights that you're giving up by pleading guilty?

24 THE DEFENDANT: Yes.

25 THE COURT: Now that you know what you're giving up,

1 do you still want to plead guilty?

2 THE DEFENDANT: Yes.

3 THE COURT: Has anyone made any threats to you to
4 try to force you to plead guilty?

5 THE DEFENDANT: No.

6 THE COURT: Do you feel that you have been pressured
7 in any way to plead guilty?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: I know that you and the government have
10 a plea agreement, and I am going to get to that in just a
11 moment; and that plea agreement addresses the agreement that
12 you all had with respect to sentencing.

13 Has anyone reached any agreement with you or
14 promised you anything regarding the sentence you will receive
15 beyond what's in the Memorandum of Agreement and the plea
16 agreement?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Are you pleading guilty voluntarily?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Mr. Carruthers, I'd like you to take a
21 look at these two documents. One of them is called
22 "Memorandum of Agreement." The second document is called
23 "Plea Agreement Guidelines, Recommendations and
24 Stipulations." Does your signature appear at the end of each
25 of these documents?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Before you signed these documents, did
3 you read them?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Did you also review them with your
6 lawyers?

7 THE DEFENDANT: Yes.

8 THE COURT: And have they answered all of your
9 questions about these documents to your satisfaction?

10 THE DEFENDANT: Completely.

11 THE COURT: Do you understand what these documents
12 say?

13 THE DEFENDANT: Yes.

14 THE COURT: And do these documents contain all of
15 the agreements between you and the government relating to
16 this case?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Has anyone reached any agreement with
19 you pertaining to this case that is not contained in these
20 documents?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Okay. Let's start with the plea
23 agreement.

24 According to the plea agreement, in exchange for
25 your guilty plea to Count 1 of the Third Superseding

1 Indictment, the government has agreed that it will move to
2 dismiss Counts 2 through 5 and Counts 17 through 19 against
3 you at sentencing; is that correct?

4 THE DEFENDANT: That's correct.

5 THE COURT: The government has also agreed that it
6 will not bring any further federal prosecution against you in
7 the Eastern District of Missouri relative to your
8 participation in the BetonSports organization, as described
9 in the Third Superseding Indictment. Is that also a correct
10 statement of what the government has agreed to do?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Now, in this document, you have agreed
13 to give up your right to appeal all nonjurisdictional issues
14 in this case; is that correct?

15 THE DEFENDANT: That's correct, Your Honor.

16 THE COURT: Now, this is where things get a little
17 unclear for me.

18 MR. HOLTSouser: Should I try to summarize, Your
19 Honor?

20 THE COURT: Well, let me just ask this: On page
21 four of the plea agreement, Paragraph B, it provides that "If
22 the Court accepts the plea and applies the recommendations
23 agreed to by the parties," are you referring to the
24 recommendation regarding the sentence? Not the
25 recommendations regarding the guidelines but the

1 recommendation regarding the sentence?

2 MR. HOLTSouser: Yes, Your Honor. And this is in
3 the section regarding Waiver of Appeal. There are three
4 components to the waiver of appeal; one being nonsentencing
5 issues and other being sentencing issues. And this language
6 is no different in this document than it is in the standard
7 plea agreement that you're familiar with.

8 THE COURT: Right. I understand. But the
9 difference here is that the parties have reached an agreement
10 with respect to a recommendation that will be made regarding
11 sentencing in this case.

12 MR. HOLTSouser: It would apply to that, Your
13 Honor.

14 THE COURT: Okay. I just wanted to make it clear,
15 because the plea agreement also contains recommendations
16 regarding the guidelines --

17 MR. HOLTSouser: Correct.

18 THE COURT: -- which, based on what you all are
19 recommending are the guidelines, the sentencing range is much
20 higher than what will actually be recommended.

21 MR. HOLTSouser: Correct.

22 THE COURT: And I just wanted to clarify that.
23 Okay.

24 So your agreement is that if the recommendation
25 regarding the sentence, as reflected in the Memorandum of

1 Agreement, is followed by the Court, then the defendant
2 waives his rights to appeal that sentence?

3 MR. HOLTSouser: Correct.

4 MR. ROSENBLUM: That's correct.

5 MR. HOLTSouser: And that recommendation is
6 essentially that, if you don't go above that sentence, then
7 that recommendation is in effect fulfilled.

8 THE COURT: All right.

9 MR. ROSENBLUM: Correct.

10 MR. HOLTSouser: Anything within that range
11 constitutes a sentence within the recommendations of the
12 parties.

13 THE COURT: Okay. That's fine.

14 Now, Mr. Carruthers, is that your understanding as
15 well? That is, if the Court imposes a sentence based on the
16 recommendation contained in the Memorandum of Agreement,
17 which would be a range of 33 months to 41 months in prison --

18 MR. ROSENBLUM: No.

19 THE COURT: Okay.

20 MR. HOLTSouser: What page do you see the 32 to 41,
21 Your Honor?

22 THE COURT: Well --

23 MR. HOLTSouser: I think it was 33 months.

24 THE COURT: I'm sorry. Excuse me?

25 MR. ROSENBLUM: It is essentially an agreement with

1 a ceiling of 33 months, which allows us to submit to the
2 Court 3553 factors, other than diminished capacity, so that
3 the Court could consider a sentence of less than 33 months
4 with no floor. And the government reserves its right to
5 appeal -- I'm sorry -- to oppose.

6 THE COURT: Right. Okay.

7 MR. HOLTSouser: The section you're questioning
8 about is waiver of appeal. Mr. Carruthers essentially waives
9 his rights to appeal whatever sentence you impose, as long as
10 he's sentenced to 33 months or less is the way I would
11 understand it.

12 MR. ROSENBLUM: Correct.

13 MR. HOLTSouser: The way this operates, as far as
14 waiver of appeal goes.

15 The remaining agreements are contained within the
16 Memorandum of Agreement and within the operative language, I
17 think, is also on page two.

18 THE COURT: Okay. See, that's what --

19 MR. HOLTSouser: The second paragraph of the Plea
20 Agreement section. What is stated there, is basically
21 represented within the Memorandum of Agreement.

22 THE COURT: Okay. I just want to make sure that I
23 have this right, because that's not exactly what this
24 Paragraph B says in the plea agreement. Let me try this
25 again.

1 Mr. Carruthers, my understanding is that you are
2 giving up your right to appeal the sentence that you receive
3 if that sentence is 33 months in prison or less?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Okay. Did I get it right that time?

6 MR. ROSENBLUM: Yes, Your Honor.

7 MR. HOLTSouser: I think you got it right from the
8 start, Judge. So it's just a clarification.

9 THE COURT: Okay. Well, you've also agreed in this
10 document to give up your right to challenge your conviction
11 and sentence in any post-conviction proceeding, unless that
12 challenge is based on a claim of prosecutorial misconduct or
13 ineffective assistance of counsel.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Is that right? All right. Now, in this
16 document, you are reserving your right to file a motion
17 asking for a sentence below 33 months; is that correct?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And the government has stated that it
20 may oppose that motion --

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: -- is that your understanding? Okay.

23 MR. ROSENBLUM: Judge, subject to the one
24 limitation, which is that we've agreed not to ask the Court
25 to consider any issues pursuant to what would be 5(k) (213) or

1 diminished capacity.

2 MR. HOLTSouser: And one other qualification,
3 Judge, I think is important with respect to that is that 5(k)
4 motion which the agreement contemplates only operates down to
5 33 months.

6 The only thing operable after that that
7 Mr. Carruthers can request would be pursuant to 3553(a),
8 subject to that limitation that Mr. Rosenblum referenced,
9 which means not for anything regarding diminished capacity.

10 THE COURT: All right. So, Mr. Carruthers, if you
11 do request a sentence below 33 months, that request cannot be
12 based on a claim of diminished capacity or -- what was the
13 other one?

14 MR. HOLTSouser: Substantial assistance.

15 THE COURT: -- or substantial assistance.

16 THE DEFENDANT: I understand, Your Honor.

17 MR. ROSENBLUM: Substantial assistance.

18 THE COURT: And there is no property subject to
19 forfeiture with respect to this defendant; is that correct?

20 MR. HOLTSouser: Not that we're aware of, Your
21 Honor.

22 MR. ROSENBLUM: No, Your Honor.

23 THE COURT: All right. Now, turning to this
24 Memorandum of Agreement, in this Memorandum of Agreement,
25 Mr. Carruthers, the government has again agreed to dismiss

1 Counts 2 through 5 and 17 through 13 of the Third Superseding
2 Indictment against you at sentencing; is that correct?

3 THE DEFENDANT: I understand. Yes. Your Honor.

4 THE COURT: And the government has and you have
5 disagreed that you will not engage in any offshore United
6 States facing gambling business during the term of your
7 supervised release; is that correct?

8 THE DEFENDANT: That's correct, Your Honor.

9 THE COURT: You've also agreed that you will provide
10 truthful and complete cooperation to the government regarding
11 the BetonSports sports gambling operation. Is that correct?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And the government has agreed that all
14 cooperation that you provide will be relayed to the Court; is
15 that correct?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. And that provided you
18 provide substantial assistance, the government will file a
19 motion for a downward departure under the Sentencing
20 Guidelines asking that your sentence be 33 months in prison;
21 is that correct?

22 THE DEFENDANT: Yes, Your Honor. I understand.

23 THE COURT: You have also agreed in this document
24 that if you are sentenced to a term of imprisonment, then,
25 after you are released from prison, you will not engage from

1 any occupation or business venture involving the operation of
2 a United States facing sports book; is that correct?

3 THE DEFENDANT: That's correct, Your Honor.

4 THE COURT: Okay. Mr. Carruthers, do you understand
5 that the Court is not required to accept the government's
6 request of a sentence of not more than 33 months in prison?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: If I determine not to accept that
9 request and if I determine that you should receive a sentence
10 of imprisonment above 33 months, then I will let you know
11 that at sentencing; do you understand?

12 THE DEFENDANT: I understand.

13 THE COURT: And I will give you the opportunity at
14 that time to withdraw your guilty plea; do you understand?

15 THE DEFENDANT: I understand.

16 THE COURT: If you choose at that time not to
17 withdraw your guilty plea, then you will be exposing yourself
18 to a sentence above 33 months in prison. Do you understand
19 that?

20 THE DEFENDANT: I understand.

21 THE COURT: Up to the statutory maximum for this
22 offense. Do you understand that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. And, finally, do you understand
25 that the government's obligation to file the Motion for

1 Downward Departure depends on your compliance with the terms
2 of this Memorandum of Agreement?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: If you don't comply with these terms,
5 then the government may be relieved of its obligation to file
6 the motion.

7 THE DEFENDANT: I understand.

8 THE COURT: Okay. Referring again to the plea
9 agreement, on page seven of the document, there are
10 recommendations that you and the government are making to the
11 Court concerning the Sentencing Guidelines. Do you
12 understand that I'm not required to follow these
13 recommendations?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: If I don't follow them, you will not
16 have the right to withdraw your guilty plea. Do you
17 understand that?

18 THE DEFENDANT: I understand.

19 THE COURT: The Sentencing Guidelines are advisory.
20 I will consider the guidelines in determining your sentence,
21 but they will not be the only factor that I will consider; do
22 you understand?

23 THE DEFENDANT: I understand. Yes.

24 THE COURT: Mr. Carruthers, the penalties for the
25 offense in Count 1 include a sentence of not more than 20

1 years in prison or a fine of not more than \$250,000 or both;
2 do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: You may also be required to pay
5 restitution to any victim of this offense; do you understand?

6 THE DEFENDANT: I understand.

7 THE COURT: In addition to any fine or restitution
8 that may be ordered, there is a \$100 assessment that you will
9 have to pay at sentencing; do you understand?

10 THE DEFENDANT: I understand.

11 THE COURT: If you receive a sentence of
12 imprisonment, then, after you are released from prison, you
13 will be placed on supervised release for a period of not more
14 than five years. Do you understand?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Conditions of supervised release will be
17 explained to you when you are sentenced, and you'll have to
18 follow all of those conditions.

19 Under some circumstances, the conditions can be
20 changed during the supervised release term or the term of
21 supervision can be shortened or lengthened; do you
22 understand?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: If you violate any condition, then your
25 supervised release term could be revoked. If there is a

1 revocation, you could be sentenced to a term of imprisonment
2 equal to the length of the supervised release term; do you
3 understand?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: After you complete that sentence of
6 imprisonment, you could be placed on supervised release
7 again; do you understand?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: You will not be released on parole from
10 any sentence of imprisonment that you receive; do you
11 understand.

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And by pleading guilty, you are exposing
14 yourself to all of the penalties I've described to you; do
15 you understand.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: The Probation Office will complete a
18 Presentence Report that will be given to you and your lawyer
19 before sentencing. You'll have the opportunity to read that
20 report and make objections to anything in it that you
21 disagree with.

22 After I rule on the objections, then I will
23 determine your sentence. I will take into consideration the
24 information in the Presentence Report; other information that
25 you or the government provide to me before or at sentencing;

1 the Sentencing Guidelines; and all other factors that the law
2 requires me to consider; do you understand?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Mr. Carruthers, do you have any
5 questions about the possible penalties that you are facing or
6 about anything that I've said to you this morning?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Please tell me what you did in
9 connection with Count 1.

10 THE DEFENDANT: Well, Your Honor, it was in July of
11 2000 that I joined BetonSports as an employee. I was
12 recruited in the United Kingdom by Gary Kaplan, and I was to
13 lead the business in its growth strategies out the United
14 States and to prepare the business for an ultimate flotation
15 on the London Stock Exchange; something that I did in June,
16 2004.

17 As my role as Chief Executive, I progressively
18 became familiar and took control of the strategic and
19 day-to-day business operations of BetonSports and an
20 understanding of the business overall, including the U.S.
21 market. I also assisted the business in a structured
22 reorganization and recruited senior staff and a Board of
23 Directors for the listing on the London Stock Exchange.

24 I understand and I know that the business activities
25 of BetonSports in some cases were illegal; and, therefore,

1 some of my actions as Chief Executive were also illegal
2 actions contravening the Wire Act and other U.S. gambling
3 laws. Specifically, the business accepted sports bets from
4 United States customers by the telephone and Internet.

5 Additionally, it aggressively advertised its
6 services in the United States as legal and licensed; and it
7 furtively or covertly used money transfer service providers
8 to accept its customers' deposits and pay its customers'
9 winnings.

10 THE COURT: Thank you. Mr. Carruthers, I have a
11 couple of questions for you. You said that you know that
12 some of the activities of BetonSports were illegal. Did you
13 know that to be the case at the time you were involved with
14 the organization?

15 THE DEFENDANT: Well, I was involved with the
16 organization for a period of six years. So my knowledge and
17 understanding of these events was progressive. I didn't
18 think that these activities were illegal when I joined the
19 business. But sometime after that, it became unclear whether
20 it was or wasn't. And then it became clear that it was.

21 THE COURT: All right.

22 THE DEFENDANT: Do you understand?

23 THE COURT: I understand. And you were involved
24 with other individuals. You mentioned Mr. Kaplan -- Gary
25 Kaplan -- and other individuals connected with the

1 BetonSports organization?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. And according to the
4 indictment, you conspired with some individuals to violate
5 various state and federal laws in connection with the
6 BetonSports enterprise.

7 Did anyone force you to become involved in that
8 activity?

9 THE DEFENDANT: No, I did this of my own free will.

10 THE COURT: All right. You were involved with the
11 BetonSports enterprise sometime between 1989 until July of
12 2006? Or tell me --

13 THE DEFENDANT: I only became involved in July of --
14 of 2000 and until I was relieved of my duties some time, I
15 think, in August of 2006. That was after I was taken into
16 custody.

17 THE COURT: All right. And you were an officer of
18 the company? Of BetonSports?

19 THE DEFENDANT: I was the Chief Executive, and I was
20 a director of the PLC.

21 THE COURT: Okay. All right. Mr. Carruthers, do
22 you still have a copy of the plea agreement?

23 THE DEFENDANT: Yes.

24 THE COURT: Please turn to page nine. There is a
25 Paragraph 4 that reads "Stipulation of Facts Relative to

1 Sentencing." Do you see where I'm reading?

2 THE DEFENDANT: Yes.

3 THE COURT: Beneath that heading is a Statement of
4 Facts that ends on page 18.

5 THE DEFENDANT: Yes. Yes, Your Honor.

6 THE COURT: Did you read that Statement of Facts?

7 THE DEFENDANT: Very carefully.

8 THE COURT: And do you agree with that Statement of
9 Facts?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Thank you.

12 Based on the defendant's statements under oath and
13 the stipulation, I find that the defendant is competent to
14 enter a plea of guilty; that he is pleading guilty
15 knowledgeably and voluntarily; and his guilty plea has a
16 factual basis establishing all of the elements of the offense
17 charged in Count 1 of the Third Superseding Indictment.

18 The Court will accept the defendant's guilty plea;
19 however, I will reserve judgment on whether or not to accept
20 the plea agreement. I will make that determination at a
21 later time and will let you know that one way or the other at
22 sentencing, and we need a sentencing date.

23 (Whereupon, an off-the-record discussion took place.)

24 MR. HOLTSouser: I would suggest a date perhaps in
25 January. And if a sooner date becomes viable, then the Court

1 would be aware of that and could reset this, I think.

2 THE COURT: Well, here's what I prefer to do: I
3 think I would rather do it sooner and set an earlier date.
4 And then if it has to be moved to a date after the trial of
5 the other defendants, then I can do that a lot more easily.

6 So why don't we say Friday, October 2nd at
7 10:00 o'clock. And, again, I understand that Mr. Carruthers
8 has agreed, among other things, to provide testimony if
9 necessary; and the trial is scheduled to begin in September.
10 If the trial goes forward, then I'll delay the sentencing of
11 Mr. Carruthers until after he has completed his testimony or
12 the government determines that it's not going to be necessary
13 for him to testify.

14 Now, is there any objection to continuing the
15 defendant's release?

16 MR. HOLTSHouser: There is not.

17 THE COURT: All right. Mr. Carruthers, all of the
18 conditions of your release will remain in effect. I believe
19 you are under house arrest, and you're subject to electronic
20 monitoring as well.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. Those conditions will
23 continue along with the others. One of the conditions of
24 your bond is that you appear as required. If you violate
25 that condition, you could be charged with another crime.

1 Violation of any condition of the bond could result in a
2 revocation of your release and your incarceration; do you
3 understand?

4 THE DEFENDANT: I understand.

5 THE COURT: If you have any questions about the bond
6 conditions, you should talk to your lawyers or to the
7 Pretrial Services Office, and they should be able to answer
8 any questions you have. Do you have any questions about the
9 bond conditions this morning?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: All right. Is there anything else from
12 the government on this case?

13 MR. HOLTSHouser: No, Your Honor.

14 THE COURT: Mr. Rosenblum?

15 MR. ROSENBLUM: No, Your Honor.

16 THE COURT: All right. We're from recess.

17 MR. ROSENBLUM: Thank you.

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19 (Proceedings concluded at 12:01 p. m.)

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UNITED STATES OF AMERICA)
EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION) SS:
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C E R T I F I C A T E

I, Gary Bond, Certified Shorthand Reporter in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings had the 1st day of April, 2009, in the above mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 through 27 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand
at St. Louis, Missouri, this 23rd day April, 2009.

/s/ Gary Bond
Gary Bond, RPR, RMR
Certified Shorthand Reporter